

Service Date: December 30, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF An Investigation	)	
of NorthWestern Energy's Financial and	)	UTILITY DIVISION
Related Transactions with NorthWestern	)	
Corporation, its Affiliates and Creditors	)	DOCKET NO. D2003.8.109
That May Impair Its Financial Solvency	)	
and Public Utility Service Obligations	)	ORDER NO. 6505b

**SUPPLEMENTAL ORDER INITIATING INVESTIGATION**

**Background**

1. On August 22, 2003 the Commission issued Order No. 6505 in this docket, granting a request from the Montana Consumer Counsel (MCC) to open a certain investigation into NorthWestern Energy (NWE), a division of NorthWestern Corporation (NOR), a Montana public utility. In addition to describing the scope of the investigation, Order No. 6505 directed NWE to provide information identified at Attachment 1 to that Order by September 2, 2003, and to meet other procedural deadlines set forth in a partial procedural schedule.

2. On September 14, 2003 NorthWestern Corporation filed for protection under Chapter 11 of the Bankruptcy Code. The bankruptcy filing, a disagreement between NWE and the Commission over the legal effect of the bankruptcy filing on this docket, and the unusually expedited procedural schedule established by Order No. 6505, caused a de facto suspension of the NWE investigation after September 14, 2003. In addition, the Commission informally agreed to temporarily not press the investigation in light of the workload burden on NWE caused by the bankruptcy filing.

3. On December 3, 2003, on Commission direction, Commission staff convened a meeting of parties to discuss revising the procedural schedule in this docket. At that meeting there was discussion of the possibility that, as a result of the bankruptcy filing, the scope of the docket, and initial round of information required of NWE, may need to be modified. Therefore, staff solicited comments from the MCC on the post-bankruptcy scope of the docket, and provided

NWE and other parties an opportunity to respond. MCC filed comments on December 9, 2003, and NWE responded on December 16, 2003. NWE did not indicate disagreement with the MCC over the post-bankruptcy filing scope of the docket, and indicated it could respond to the information requests by January 15, 2004.

**Modifications to Scope of  
Docket and Information/Production  
Requirement.**

The Commission modifies each paragraph and section of Order No. 6505 as follows:

Paragraph 1 - No change

Paragraph 2 - MCC's petition further requests that the Commission consider the adoption of regulatory requirements, controls and measures that the MCC believes may be required to protect the public interest in reliable, safe and adequate utility service at just and reasonable rates, including:

a. inter-company and inter-affiliate transactions including NWE or assets of NWE that may have operated, or appear to be operating, to the detriment of NWE's ability to provide safe, reliable and adequate utility service at just and reasonable rates.

b. no change.

c. no change.

d. no change.

e. the adoption of principles governing future financing involving assets of NWE, including the following principles at a minimum:

- authorization to issue debt that is secured (i.e., backed) by utility assets must use the proceeds of the debt for utility purposes only;
  - if any utility assets that are pledged or encumbered to secure debt issuances are divested or 'spun off,' the debt must 'follow' the assets and be divested or 'spun off' as well;
  - if utility assets financed by unsecured debt are divested or "spun off" to another entity, then a proportionate share of the debt also must be divested or "spun off";
  - If assets financed with unsecured debt are divested or "spun off," the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must "follow" the non-utility assets and if the non-utility assets are divested or "spun off" then a proportionate share of the debt must follow the associated non-utility assets by being divested or "spun off" as well. The term "divested" in this context includes moving assets to both affiliated and non-affiliated corporations;
- f. no change.

### DECISION

Paragraph 3 -The Commission finds ample cause to be set forth in, and established by, MCC's Petition to initiate the requested investigation. Accordingly, the Commission directs that such investigation be opened pursuant to the authority vested in the Commission by §§69-3-102 and 106, MCA. The Commission further directs that NWE shall submit detailed reports by January 15, 2004, executed under oath by the corporate officers or other executive personnel most knowledgeable, concerning each of the matters set forth in Amended Attachment 1 to Order No. 6505b, and to produce those corporate officers or other executive personnel most knowledgeable for examination by the Commission or designated Commission personnel on a schedule to be determined by the Commission. The NWE response to Amended Attachment 1

should be specific and focused, with respect to both narrative answers and information and document requests. Response by reference will generally not be acceptable. If NWE concludes that with regard to a particular response it is impossible, or extremely burdensome, to meet this standard, it should contact the Commission and the MCC to discuss an acceptable method of responding.

Paragraph 4 - Deleted as moot, except to the extent NWE chooses to amend or expand its previous response.

#### CONCLUSIONS OF LAW

The Commission adopts its Conclusions of Law as stated at Order No. 6505 in this docket.

#### ORDER

The Commission reaffirms its Order section of Order No. 6505, except that the procedural conference and technical conference contemplated in that section have been held. To the extent additional such conferences are necessary in the docket they will be scheduled. Also, the deadline for intervention in this docket has passed. A procedural order will be issued separately.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ROWE, Chairman

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THOMAS J. SCHNEIDER, Vice Chairman

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MATT BRAINARD, Commissioner

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GREG JERGESON, Commissioner

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JAY STOVALL, Commissioner

ATTEST:

Connie Jones  
Commission Secretary

(SEAL)

**AMENDED ATTACHMENT 1****INVESTIGATION OF NWE FINANCIAL MATTERS  
NWE REPORTING REQUIREMENTS**

1. According to NOR's current proxy statement, "commencing in 2005, the Company faces substantial debt reduction payments." State, by year and due date, the levels of these debt reduction payments and identify specifically the application of the proceeds of each debt to which these payments are directed.
2. According to NOR's current proxy statement, "Absent the receipt of significant proceeds from the sale of noncore assets, the raising of additional capital or a restructuring of debt, the Company will not have the ability to reduce its debt or meet its maturing debt obligations."
  - a. State in detail, by month for each of the past twenty four months and currently, the level of revenues generated by the Utility and how those revenues have been directed in the corporation.
3. Explain in detail the structure and operation of the five wholly owned special-purpose business trusts of NOR, including the purpose for which each was formed, the date and capitalization of its formation, the identities of the settlor(s) and trustee(s), and the funding and cash flows to each from the Utility's operations for each of the past twenty four months and currently: NWPS Capital Financing I (NYSE:NOR PrA); NorthWestern Capital Financing I (NYSE:NOR PrB); NorthWestern Capital Financing II (NYSE:NOR PrC); NorthWestern Capital Financing III (NYSE:NOR PrD); and Montana Power Capital I (NYSE:MTP PrA).
4. Provide a detailed explanation of NOR's compliance to date with Commission Order 6474a, in Docket No. D2002.12.159, as to the following matters:
  - a. Order 6474a requires: "When a sale in whole or in part of any non-utility entities is completed the proceeds shall be as expeditiously as possible applied to debt reduction."
    - i. Identify each asset of any of the non-utility entities that has been sold or encumbered since January 27, 2003.
    - ii. Provide, for each such asset that has been sold, the sale price and terms of sale; for each such asset that has been encumbered, the method of encumbrance, the creditor in whose favor the encumbrance was granted, the proceeds of the financing involved, and the application of the proceeds of such financing.

- b. Order 6474a states: “The Commission does not favor additional financing of the subsidiaries since further investments in the subsidiaries may not be in the best interests of utility customers.”
  - i. Identify each drawing of funds by NOR’s non-utility subsidiaries since January 27, 2003;
  - ii. For each such drawing, explain in detail the amount(s), source(s), and application of the funds involved.
- c. Order 6474a states that “Approval of this application requires an ongoing commitment to fully fund comprehensive operation, maintenance, repair and replacement of its public utility infrastructure in Montana” and further requires that “NorthWestern must file a maintenance plan and budget within 45 days of the issuance of this Order.”
  - i. Provide the maintenance plan and budget;
  - ii. Provide each change to the maintenance plan and budget;
  - iii. Assess the current status of the Company’s implementation of the maintenance plan and budget;
  - iv. What service quality metrics does the Company presently use to assess the adequacy of its service, and provide all records relating to such metrics for the past 15 months;
  - v. Provide copies of the Company’s current manuals, policies and procedures for facilities maintenance and replacement.
  - vi. Itemize by account number from the Uniform System of Accounts (18 C.F.R. Part 101): (a) the amounts expended by the Company on operation, maintenance, repair and replacement activities since January 27, 2003; (b) the amounts scheduled to be expended by the Company on those activities between August 1, 2003 and December 31, 2003; (c) the amounts required to be expended to bring the Company into compliance with the objectives and targets set forth in its maintenance plan and budget; (d) the amounts estimated by the Company to be required to bring the Company’s transmission and distribution systems into a state of compliance with each applicable safety and reliability code and criterion (NERC or NAERO,

WECC, National Electrical Code, National Electrical Safety Code, etc.).

- d. Order 6474a states that: “The Commission expects the board of directors and management, to fully examine all options, including but not limited to:”
  - i. “dividend policy and payouts;”

Provide a copy of the Company’s current dividend policy, and state the amount and date of the Company’s two most recent dividend payouts.

- ii. “board of directors and senior management compensation levels and concessions;”

(a) Provide a complete schedule of all compensation and benefits (including retention and incentive bonuses, options, contingent compensation (e.g., “golden parachutes” and performance incentives), and the cost to the Company on an annual basis of all non-monetary compensation, benefits or other consideration provided (including automobile, rail and airplane travel allowances), for each member of the Board of NOR and each management position at the level of Vice President or above.

(b) Identify and explain in detail (with copies of all pertinent documents) each change in compensation and benefits for each member of the Board of NOR and each management position at the level of Vice President or above since January 1, 2001.

(c) Identify and explain in detail (with copies of all pertinent documents) each proposed and/or contemplated change in compensation and benefits for each member of the Board of NOR and each management position at the level of Vice President or above which has not yet been implemented.

Provide a detailed report on the Company’s efforts, since January 27, 2003, to sell or otherwise dispose of any of its utility assets or operations, including all documents proposing, analyzing, accepting or rejecting any such sale or other disposition.

- e. Order 6474a requires that “NorthWestern must report all advances to non-utility companies within 5 business days of the advances to this Commission.”
  - i. Itemize in detail each advance made to any affiliated non-utility company by NOR since January 27, 2003;



- ii. For each such advance, state the date on which NOR reported the advance to the Commission.

5. Provide monthly reports for the period August 1, 2002 through December 31, 2003, updated as information becomes available, detailing the following:

- a. Affiliate transactions to NWE;
- b. Affiliate transactions to NWE's Montana utilities;
- c. Affiliate transactions by NWE;
- d. Affiliate transactions by NWE's Montana utilities;
- e. To the extent not reported in a-d, provide details of transactions between NOR and NWE.

6. Provide monthly reports using the uniform system of accounts [income statements, balance sheets, and statements of cash flows] which reflect the results of operations for the most recent 12 month period for:

- a. NWE's Montana electric and gas utilities:
  - i. Regulated;
  - ii. Non-regulated;
- b. NWE (the utility division of NOR):
  - i. Regulated;
  - ii. Non-regulated;
- c. NOR.

7. Provide a detailed description of the corporate structure of NOR, its affiliates and divisions.

8. Provide the status of and schedule for payments of Montana property taxes.
9. Provide a list and detailed description and status of all current lawsuits or litigation in which NOR or any of its affiliates are involved, and expenses incurred to date for shareholder lawsuits.
10. Provide a detailed schedule of all NOR long term debt, including the current portion thereof, showing the outstanding principal balance, interest rate, accrued interest, and payment schedule. For each item of indebtedness indicate whether it is allocated to the utility business or other business, and if to the utility business, whether it is related to the Montana, Nebraska, or South Dakota utility business.
11. Provide a copy of the appraisal covering the assets of NOR subject to the lien of the Montana First Mortgage Indenture referred to in Paragraph 4.3(d) of the Credit Agreement among NOR, the several lenders, and Credit Suisse Fund Boston, dated December 17, 2002.